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FACT SHEET STATEMENT OF BASIS

2013 RENEWAL OF THE UTAH CONSTRUCTION STORM WATER GENERAL PERMIT

UPDES PERMIT No. UTRC00000

GENERAL PERMIT INFORMATION: This renewal permit (UTRC00000) serves as a replacement of the previous Storm Water General Permit for Construction Activities (CGP) issued on July 01, 2008 (UTR300000). The Utah CGP is a general permit to continue the streamlined permit coverage of typical construction activity for storm water discharges throughout the State of Utah except for within Indian country, of which in those areas the EPA is the permitting authority. Construction activity that does not anticipate the typical pollutants from normal construction activity (e.g., development of residential, commercial, or industrial sites; road and bridge construction, building construction, pipeline and other linear construction, landscaping, or other similar construction) may not be eligible for coverage under the CGP and may need to apply for an individual permit.

BACKGROUND: The State of Utah was granted primacy in the National Pollutant Discharge Elimination System (NPDES) program by the USEPA in 1987. Utah's program is known as the Utah Pollutant Discharge Elimination System (UPDES) Program. The storm water program is one part of the UPDES program and was first implemented in Utah during 1992. Utah began issuing CGP coverage in 1992 for sites disturbing greater than or equal to five acres in size, or less than five acres if part of a common plan of development or sale that was five acres or greater. This effort was referred to as Phase I. In 2002, phase II of the storm water program was implemented in Utah and the UPDES storm water program added a permit requirement for small construction sites, which are sites that are one to five acres, or less than an acre if part of a common plan of development or sale that is one acre or greater.

The Division of Water Quality (DWQ) presently handles most storm water permit coverages by issuing general permits, although it reserves the authority to issue individual permits as needed. Approximately 1500 to 2500 construction sites are covered under the CGP at any given time. .

The CGP for the UPDES program started with a modified version of the early EPA CGP, and from there the Utah CGP has been re-modified every five years. The current revision of the Utah CGP started with the 2012 EPA permit which was overhauled in a major way and upgrade from the previous EPA CGP. It included the recently promulgated 40 Code of Federal Regulations 450 Construction and Development Point Source Category requirements. This EPA permit has much more detail and is a longer permit, and therefore much of the detail, the length, and the regulatory requirements have been transcribed into the Utah CGP.

LEGAL PROCESS FOR PUBLIC DOCUMENTS: UPDES permits are public legal documents and before issuance are required to have a 30-day comment period for input by the public and regulated community. This process is applicable to general permits since they are legal and binding. The Utah CGP for this issuance is aligned with the EPA in the fact that it contains several appendices. Some of these appendices are related enough to the permit and have conditions that compliment or continue the regulatory nature of the permit. The appendices of this nature are included with the body of the permit in the legal comment process. Appendices that are not included in the legal comment process are identified in the permit. The appendices that are not included in the comment period are included with the permit to provide information and aides for the permittee. They have no legally binding or regulatory reach. The permittee is not required to use the information within them. Because of this they are not included in the legal process and are not bound by the same restrictions regarding modifications and change. It is expected that these appendices may be changed if it is discovered that they can be presented in a better more helpful layout.

DESCRIPTION OF DISCHARGE: This permit covers discharges from construction activities as defined in Utah Administrative Code (UAC) R317-8-3.9 (6) (d) 10 (construction activity 5 acres or more) and R317-8-3.9(6) (e) 1 (construction activity 1 to 5 acres). Also, under the UAC R317-8-3.9(6)(e)2 any construction activity can be required to obtain a permit if designated by the Executive Secretary based on a potential contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

Storm water discharges covered by this permit are discharges with potential for erosion from disturbed land, which may result in high sediment loads; with exposure to construction machinery and equipment; with exposure to all construction activities; and with exposure to construction materials.

This permit regulates storm water discharges only. Other discharges that may be allowed under this permit, providing water quality is not affected, are discharges from emergency fire-fighting activities; fire hydrant flushing; landscape irrigation; waters used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes; water used to control dusts; potable water sources including uncontaminated waterline flushing; routine external building wash down which does not use detergents, or that have received chemicals to alter pH ; pavement wash waters provided spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents (including Biodegradable soy bean oils and Biodegradable detergents) are not used; uncontaminated air conditioning condensate or compressor condensate; uncontaminated, non-turbid discharges of ground water (from natural sources) or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents, contaminated ground water, or sediment from construction activity. A facility may have other permitted discharges at the site not covered by this Permit.

PERMIT CONDITIONS: The strategy used in this general permit has paralleled the EPA construction general permits from the beginning of the UPDES Storm Water Program and focuses on source control through the use of Best Management Practices (BMPs). This permit contains provisions that limits the discharge to storm water with some exceptions, that requires specific inspection requirements and

frequencies, that specify what records shall be retained and for how long, and that a storm water pollution prevention plan (SWPPP) be developed and implemented on the construction site before a Notice of Intent (NOI) permit application is submitted for coverage under the CGP. The focus of the permit is the SWPPP which covers the main points listed below:

- a. Responsible parties and contact information
- b. Site description
- b. Controls to reduce pollution
- c. Maintenance of control measures
- d. Self-Inspections
- e. Identification of and limits for Non-storm water discharges
- f. Certification and signature

This approach to permitting has been selected to maintain a degree of conformity with the storm water program used in other states and by the EPA, but also because it has already gone through a public notice process and the public has had a chance to see and respond to the contents of the permit as the 2012 EPA CGP. As stated the 2012 EPA CGP was used as the starting point in the initial development of this permit. There are some changes that were made, which will be discussed later in this document, to make it more applicable to Utah's unique characteristics.

NUMBER ON THE PERMIT AND CONTINUING COVERAGE FROM THE PREVIOUS PERMIT: The basic numbering for this permit (UTRC00000) was changed from the previous permit to create a greater distinction from industrial storm water permits. The first part of the number "UTR" is coordinated with a national numbering scheme, and assigned by the EPA for the purpose of being able to distinguish a permit located within Utah against permits located in other states, "R" indicating an industrial storm water permit (permits covering storm water from construction sites are considered industrial storm water permits). "C" has been added to replace the numeral that had been previously used to distinguish the permit from other industrial permits.

All construction site permit coverages issued under the previous Utah CGP are automatically continued under this permit with no action required by the permittee except to meet the differing requirements in the new permit by the timeline given in the new permit. Coverage that is continuing from the previous Utah CGP (UTR300000) to the new Utah CGP (UTRC00000) extends into and under the new Utah CGP and continues until the term purchased under the previous permit expires, the same as if there was no transition to new permit coverage. The permit coverage number continuing from the previous permit will not be changed to conform with the new numbering system in the renewed permit (UTRC00000). The numbers will be maintained as they were.

PERMIT FEES: Historically, during the life time of the previous CGP, fees were changed from a yearly prorating to a fee paid for a single year's worth of coverage, or annually. If construction activity at a site continues for longer than a year, then the coverage has to be renewed again for another year and for every continuing year of coverage needed. This fee system will continue under UTRC00000 (the new CGP). Currently the permit fee is \$150 paid annually as permit coverage is needed.

ANTIDEGRADATION REQUIREMENTS FOR THE CGP: The antidegradation requirements for the Utah CGP can be found in UAC R317-2-3.5.b.3, which states that, *"An Anti-degradation Level II review is not required where (any of the following conditions apply): ,...Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired."* Therefore, because the CGP relates to only temporary construction projects with sediment or turbidity constituents, a further antidegradation review is not required.

ENDANGERED SPECIES ACT (ESA) AND NATIONAL HISTORIC PRESERVATION ACT (NHPA): In the administration of the 2012 EPA CGP, the EPA is required to support the ESA and the NHPA, and other federal programs. DWQ does not have the same obligation to ensure ESA and NHPA compliance. Although permittees may have compliance requirements with the ESA, DWQ merely points out in the CGP that the permittee may have responsibilities to comply with the ESA and/or NHPA. All requirements in the EPA CGP for complying with the ESA and NHPA have been removed from the Utah CGP. A difference in the situation with the NHPA is that concerns brought out in the NHPA, which pertain to DWQ, are written into Utah law (Utah Code 9-8-404) that puts an obligation on DWQ. The Utah law requires that DWQ provide a written evaluation of any undertaking's effect on historic properties, and allow the Utah State Historic Preservation Office (USHPO) a reasonable opportunity to comment on said effects. Undertakings are excavation activities that could interfere with historic properties discovered during the construction process. Requirements in the CGP such as the placement of silt fence and of sediment basins are storm water control measures that could be seen as undertakings by USHPO. The same Utah law has provisions where there can be an agreement worked out between the agencies (DWQ and USHPO) that will address this aspect of the law. Currently, DWQ is in consultation with USHPO to finalize an agreement on how to address undertakings related to UPDES construction storm water permitting.

SEPARATED PERMIT COVERAGE FOR SEPARATED CONSTRUCTION ACTIVITY AND AREA: The CGP allows contiguous construction activity to be covered under separated permit coverage. This applies to a project such as development of a common area which often devolves into different controlling entities in charge of independent projects such as different commercial retail buildings in a commercial development or individual home construction in a residential development. What begins under one permit may devolve into several distinct permits. Separate permit coverage does not preclude the fact that there may be a coordination requirement for smooth operation of the sites. This provision does not allow separate permit coverage of construction activity occurring in the same or overlapping area at the same time. If an overall site development activity is occurring within the boundary of a lot with

house building activity, the development activity and the house construction activity must be covered under one permit, and one must sign on as a co-permittee on the NOI for the other. If the construction area such as a house being built does not overlap development activities in near proximity during the construction process or the activities that occurred for development are concluded in the area where the housing construction is occurring, they may be covered under separate permit coverage. Often in this case where the development activity has concluded and vertical construction immediately commences, the permit coverage for the development will not require surface stabilization to terminate the permit since construction activity will immediately continue under a succeeding permit where a SWPPP continues as a plan for storm water control requiring monitoring and maintenance of storm water control measures.

OPERATORS/CO-PERMITTEES: The 2012 EPA CGP incorporates more structure into who must sign on the NOI than the previous Utah CGP. The Utah CGP incorporates that structure and identifies more precisely who must sign (e.g., owner, general contractor, sub-contractors, and other operators). The General Contractor and/or Owner (operators) are the principle operators and must be on the NOI. It is the Owner/General Contractor that must manage the site and determine who else must sign on the NOI. The General Contractor and the Owner may contract with and include another party(ies) in the permit responsibilities whereby they must sign on the NOI also. As other operators co-permittees may come and go on a project, they may not be active on the site for the duration of the project, therefore it is necessary to keep information on the operator/co-permittees and what their responsibilities are/ were in the case of enforcement and legal liabilities, however it is not necessary that the information be kept with the active SWPPP during the times in which the operator is not active on the site. These types of records must be maintained as part of the permit documents concerning coverage under the CGP as required.

In the case where a sub-contractor has been contracted to meet compliance requirements of the permit, in the eyes of DWQ the general contractor/owner team can never completely side-step compliance responsibilities of the CGP and therefore will be held responsible with the sub-contractor tasked with permit compliance responsibilities in the event of compliance enforcement. All investigations and culpability for non-compliance will be shared with the owner and/or general contractor and the sub-contractor.

STABILIZATION REQUIREMENTS: Part 2.2 of the permit has requirements about stabilization. There is a discussion in one of the notes in the Utah CGP about the common inferences that dirt roads and other similarly surfaced areas are “unstabilized”. On that point, many regulatory documents infer that something is stabilized or not, but like so many real life situations, stabilization is not black and white. There are degrees to stabilization. In the case of roads, a person should recognize that (in most cases) improved dirt roads topped with road base and that are compacted are less prone to erosion than dirt roads that are constructed by simple grading with native soil.

A note on Page 19 of the EPA CGP says: For the purposes of this permit, “exposed portions of your site” means areas of exposed soil that are required to be stabilized. Note that EPA does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). For clarification, in the Utah CGP (the same passage is included in the Utah CGP), a permittee cannot “intend” or plan to leave the entire site or significant portions of the site unstabilized based on the said passage, and be in compliance with the permit. There must be a viable purpose for leaving the area unstabilized and it must include at least a minimal attempt to reduce erosive potential (such as covering with compacted road base, garden mulch, and effort to promote vegetative growth in the succeeding months, or etc.).

The EPA has established that 70% of natural background vegetative cover is the standard that must be met by construction activity at conclusion of activities. Lesser degrees of stabilization are often seen in the natural setting throughout Utah more so than many other states. There are significant areas in Utah that have a natural 30% (or less) vegetative cover. Obviously 30% (or less) of vegetative cover is not as stabilized as 100% vegetative cover. Root mass of plants, which varies from within plant species, is another theoretical factor in stabilization (theoretical because a visual survey will not detect the extent of root mass). In a State where there are significant areas where 30% (or less) vegetative cover is the best nature provides, stabilization is not as imperative as states that naturally have much higher percentages of vegetative cover. This condition coupled with the fact that because of the arid weather, there are fewer opportunities to erode, but a higher natural erosion rate for each event. Re-vegetation has been observed to take significantly more effort to achieve in an arid area than it does in a wetter area. Plants indigenous to arid areas do not seem to germinate and become established as readily as other areas without irrigation, which is not possible for many construction sites in Utah. Often re-vegetation does not occur for 3 to 4 or more years in arid areas. For these reasons the stabilization requirements in the Utah CGP are changed from the EPA CGP to fit the said conditions in the state.

INSPECTION REQUIREMENTS: The inspection requirements found in the Utah CGP are the same as in the EPA CGP except for the allowance for inspections to be reduced to monthly in arid and semi-arid areas. Two reasons for allowing a reduced frequency of inspection for arid areas are:

- 1) Rain events wear on storm water control measures requiring maintenance which is discovered during an inspection. Where there are no or few rain events there is less wear on control measures and less need for discovery of failure or maintenance.
- 2) With few or no storm events there is less need to have storm water control measures deployed at all. Pollutants at a construction site are mobilized by precipitation runoff. If there is no rainwater to transport pollutants there is no need for storm water control measures.

There are three reasons for not including the relaxed inspection schedule for arid and semi-arid areas. One is that storm water measures and controls are damaged as much or more by construction activity as they are from storm events and weather. Another reason is inspections are an important part of being prepared for storm events when they come. Although storm events are infrequent in arid and semi-arid areas, they can be very intense if or when they do occur. There is no area in Utah that gets 0.0 inches of rain each year. If storm water controls are not prepared to contain pollutants from lack of attention (no inspection for a month qualifies), an argument is why have them at all. If storm water controls are deployed, they should be checked periodically and ready for a storm at any time. A third reason for maintaining the weekly or bi-weekly inspection schedule is to maintain regularity about the inspection schedule. It is less confusing to expect to inspect at the same frequency consistently.

Although not allowing a relaxed inspection schedule for arid areas may be seen as being stricter than the EPA, DWQ balances this with less onerous paper work by reducing the reporting requirements, as compared to the EPA permit, for corrective action (Part 5 of the permit). The Utah CGP does this by reducing the requirements for length and details entered into a corrective action response and reducing a corrective action report to a corrective action log. The justification for this is that it is not difficult to track corrective action with a simple log and to see when a site is operated well. Intricate details reported do not improve actual site preparedness.

Inspection Prompt Remains at Half Inch of Rainfall. The previous Utah CGP, like the 2010 EPA CGP, had two inspection schedules that a permittee could choose from as a permit compliance requirement. The inspection schedules are 1) the permittee must inspect the site every 7-days, 2) the permittee must inspect the site every 14 days and after every storm event that is 0.25 (or 0.5) inches or greater. In the EPA CGP the storm event criteria is 0.25 inches or greater, in the Utah CGP the storm event is 0.5 inches or greater. Utah storm events generally do not start producing runoff until after 0.25 inches of rainfall. The purpose of an inspection after a rain event is to ensure that storm water control measures remain effective. Considering a non-existent discharge or a very scant discharge, it would be unproductive to require an inspection after a 0.25 inch storm event, therefore the Utah CGP did not follow the EPA CGP in reducing the storm event criteria to prompt an inspection after a storm event of 0.25 inches or greater. In the Utah CGP the criteria that prompts an inspection in the 14 day inspection cycle (other than the 14th day) remains a storm event of 0.5 inches or greater.

2009 REGULATOR CHANGES REQUIRED IN SUBSEQUENT PERMITS: In December of 2009, the EPA issued final rules for construction activity that provides greater definition and detail to storm water controls required in this permit. These definitions and details are included in Part 2 of this permit. There are few changes from the EPA CGP in this permit except for the requirements for stabilization in arid and semi-arid areas. The changes to stabilization in the Utah CGP are allowed based on 40 CFR 450.21(b) where it says, "In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority."

OTHER SIGNIFICANT CHANGES: There are several minor changes in wording and requirement details, more than was discussed above, but not significant in the deployment of overall objectives. All were done with the intent to maintain the purposes of the permit while reducing the regulatory burden to the permittee.

The EPA has a different system for identifying waters. The EPA uses what is called a Tier system. The State of Utah uses a similar system but instead of tiers they are called categories.

The EPA CGP manages construction dewatering within the CGP, while the Utah CGP defers management of construction dewatering to another permit specifically for construction dewatering.

The Utah CGP has unique requirements, different than the EPA CGP for qualifications for those responsible for inspection of a permitted site. The Utah CGP contains more specific guidelines for a qualified individual.

PERMIT DURATION: This permit is scheduled to be effective for a duration of five (5) years from date of permit issuance

This permit has been adapted from the EPA CGP and drafted by Harry Campbell, P.E., CPESC, Utah Division of Water Quality, October 30, 2013.

PUBLIC NOTICE INFORMATION

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